

**SPEAKER RULING****Re : Production of Photostet Copies of Secret Documents to the Houses.**

**Mr. SPEAKER.**—Members have often heard almost daily or certain papers being laid on the Table. Though it is a common feature it would be worthwhile to mention that exactly are the incidents relating thereto. The papers are laid on the Table on several counts. Firstly, the documents required to be published by various departments and also directed to be laid before the Houses of Legislature are so placed. This is a statutory obligation ; failure to comply with that may even invalidate the steps taken or intended to be taken as envisaged in the contents of those papers. Yet again the Government including the Ministers desirous of making statements or bringing certain matters to the notice of the public and invite focusing of attention thereon, also lay papers on the Table of the House. Whenever a paper is laid on Table of the House it become public document. Even without being so placed it may be a public document. But there is however sanctity on its being laid on the Table of the House. Papers laid on the Table of the House are intended to be preserved in the Library of the Legislature or at an appropriate place. It is also possible that these documents may not be public prior to that but they become public when they are so laid. The private nature of the document is destroyed and they become public. The essential characteristic of a public document is that everybody is entitled to access to that paper ; is even entitled to takes a copy of the same. While this is the brief outline with regard to laying the papers on the Table of the House by or on behalf of the Government (this is not exhaustive). There is another aspect in so far as the non-minister members are concerned. There is no distinction between a private member belonging either to a ruling party or to the opposition party. Rights of private members to lay the papers on the Table of the House are restricted. The concept of the Table is an ancient one but the primary purpose of that is to give due publicity and access to the contents of the paper.

The procedure so far as private members are concerned is that a private member is not inherently or by virtue of his own membership entitled as matter of course to lay a paper on the table of the House. In the case of Government or Ministers right is almost unquestioned ; though the matter rests with the Speaker in extreme cases to prevent its being laid for appropriate reason.

In the piquancy is added to the situation when a private member wishes to tender a document or a copy thereof the original of which lies with the Government. If the Government so choose they can place it on the Table of the House but the Government for obvious reasons is not desirous of placing them on the Table of the House. If the Government agrees to so lay it, when a member tenders the document or a copy thereof there is no trouble. There is agreement on all sides and the Speaker does not mind that it is laid on the Table of the House. More often than not Government opposes the production of the paper or laying the same on the Table of the House. There is no distinction in this

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respect that the document is a private or a public once. It may be public so far as other matters are concerned. So far as Legislature is concerned the Table of the House has got peculiar significance. So it is possible to envisage situations wherein though a document is public for other purposes, for court record or newspaper publications the Government is certainly entitled to resist the placing of the same on the Table of the House. This is not because of the grave responsibility and supreme importance that is attached to the step of laying the papers on the Table of the House.

Objection at all times have been raised to a laying of the paper on the Table of the House on the ground that it is against the public interest to place it on the Table of the House. It is also based on the ground that the document is of a confidential nature and the secret nature attached thereto should not be torn away as to make it public. This is necessary in the smooth and efficient working of the Government. Papers like correspondence passing between department to department; State to Central Government and other analogous parties should not be made prematurely public and perhaps it is desirable that they should never become public. So in the interest of efficient working of the Government without detriment to the public interest Government often claims privilege. The same idea could be restated in other words. Suppose there is a document in the custody of the Government, the House or the Legislature has got the right to cause its production before it. A member is entitled to move the House requesting for its production; if the House so desires it can direct its production. This ruling was there in ancient times. The utility of the rule is cut out on account of the party system. The opinion of the House is gathered by a vote of majority. The ruling party generally carries majority of members. Therefore no purpose is served by a minority party member moving for its production. Thus in the practical shape of things this inherent right of the member to call for or cause production of a document in possession of the Government has become very little.

These documents are got by the members in their own ways. Some of them may be perfectly good but others may not be. It may be even as a result of conspiracy that the papers; originals or copies thereof are got at. Now if a member could ask for it and the Government has the right to say that it should not be compelled to produce the same and claim privilege and production at the hands of the Speaker, that such a direction should not be issued then a delicate situation arises. Normally the Government should not hesitate to place the document before the House. It has often been ruled in cases where similar situations have arisen either before the Public Accounts Committee or the Estimates Committee or any other committee that certain documents were called for by the Committee in discharge of its duties but the Government declined to produce it. The rulings are generally to the effect that the privilege claimed by the Government will be subject

to the scrutiny of the documents by the Speaker. The document should be placed before the Speaker and the Speaker should scrutinise them and apply his mind and come to the conclusion. In as much as the Government bases its request on fair grounds the Speaker more often than otherwise upholds the contention. A grave responsibility lies on the Speaker in this behalf. He is the custodian of the rights of the Members of the House. He has to be above party considerations and above inconvenience of the Government or the members of the Government and find out whether any grave injury is going to result to the public or the State or whether the safety of the State is involved or grave risks are likely to ensue to the public of the society and on a consideration of such circumstances the Speaker opines that the document need not be placed the matter rests there. The contention of the Government would have been accepted, if such is the position and the document in question is of a nature where the contention of the Government would be upheld; if a copy is obtained or the original is got at by the member who in exercise of his fundamental rights as well as rights and duties as a member of the Legislature to whom are attached certain privileges *viz.*, the privilege of full freedom of speech and protection in respect of the speeches he delivers; particularly are rights to be reconciled and how is the Speaker presiding over the deliberations to decide such matters. That is why the rules have laid that whenever a member tenders a document in the course of his debate or quotes from it extensively and then offers to lay the document on the Table of the House it is necessary that the Member should give previous intimation to the Speaker and furnish to him a copy of the document in advance so that the Speaker may be ready to make up his mind when the situation actually arises. Even with regard to situations that arise as a result of which a member without giving such previous notice straightaway refers to the document, the Speaker is entitled to be given a copy of the same before the paper could be received and laid on the Table of the House. So in such cases even when a member has referred to the contents of the document or quoted therefrom and offers the paper for being laid on the Table of the House the Speaker is entitled to peruse the document and come to the conclusion that he will not give permission for its being laid on the Table of the House. In such cases the paper so offered though tentatively will be returned. It will not go into the proceedings. It will not become a public document. The document will not be preserved for future use as is done in the case of papers normally preserved for such use. Similarly instead of a original, photostat copies are tendered. Then also similar considerations arise. Two basic principles that have been laid down either by convention or by way of inferences flowing from the ruling given are; 1—That the Chair or the Speaker will not normally ask the member as to how he got at the documents and 2— that the member takes the responsibility to authenticate the veracity or correctness of the document.

In a review of the various rules and regulations and conventions and rulings it can be seen that the field is not fully covered. Perhaps it

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is not possible to cover every possible situation because newer situations are likely or bound to arise. One can but summarise the rules that have flowed out of the past rulings. They can be set out as follows: 1—It is the right of a private member to refer to public or private documents in the course of his debate and tender the same for being laid on the Table of the House; but the request is not liable to be accepted at all events.

2 Exceptions to the basic rule inunciated as rule No. 1 do exist. It is almost universally agreed that disclosures or papers relating to matters of safety of the State or the Country and or matters relating to reason and enemy spying etc., are not to be placed on the Table of the House or accepted for being laid on the Table of the House.

Yet another clause of exception on which there is no solid unanimity of agreement is about to papers for which the Government is entitled to claim privilege and protection against compulsory production of papers in their custody.

The roles played by the Government and the opposition start from different approaches; while the Government is often sensitive against the certain of its acts being made public the opposition is attempting to ruthlessly expose any and every kind of weakness in the function of the executive Government. Though the contentions of the rival parties—one for its production and the other for its non-acceptance—may often be on the extreme limits of the requirements of the situation. In other words while the Government might honestly feel that the disclosure of certain confidential documents in their custody will place them in an embarrassing situation, real embarrassment will not be of such gravity or import that it will harm either the Government or the Society of the country as such. In such cases it is the duty of the Speaker to permit production because the Government will be more alert in its actions and no fatal results either to the Government or the society will emerge. The essence of democracy is the Government that is carried on by the accredited representatives of the people should be as much as possible open to public scrutiny and that there should be nothing to hide for the members of the Government from their colleagues in the Legislature or from the public. The other extreme step of accepting all and every document so tendered does not appear to be desirable. It will put strain upon the Government which will lessen the efficiency. In this juncture it is to be remembered that right of a member for the fullness of the freedom of speech will be denied to him if the document is not accepted.

Thus in this context it is not possible to lay down any hard and fast rule of rigid application. Certain amount of discretion in appreciating the merits and demerits, relative and associates with the two opposing contentions play a very important part. While coming to the conclusion one Presiding Officer may opine the documents that might possibly have been obtained by doubtful means should not be permitted to be laid on the Table of the House, because it is putting a premium upon

dishonesty, fraudulent means or conspiracy or similar underable laities. If documents are obtained by force and parted with unwillingly exactly similar considerations should arise. Further if the approach is made by the Presiding Officer going alone the right of aiding the rule of law the conclusion that has been arrived at by the Chairman of the Rajya Sabha is correct. Hence the difference between the two views is really not large though the result may be different but the principle is same.

I have got further details and analysis of the rulings given by the two Houses. I do not think that I should take the time of the House by entering into the detailed facts. Such of the Members who are desirous may peruse that note which covers 21 pages of typed matter.

So far as the suggestion made or the answer given by Hon'ble Sri K. Lakkappa that he got the copy from one particular gentleman whose name he gave and which gentlemen there after denied, I said that I will look into that matter. Further some of the members represented to me that if I am to analyse all the matters, it will be placing the members in an embarrassing situation as it will not enable them to have their full say. I think there is some considerable force. I propose to drop any action that I might have mentioned in this behalf with regard to the particular member who mentioned the name of the person who was supposed to have delivered it to him. Therefore that matter is now closed. We now pass on to the next.

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## SEVENTH REPORT OF THE COMMITTEE ON ESTIMATES

### *Presentation.*

SRI G. A. THIMMAPPA GOWDA (Chairman, Estimates Committee).—Sir, I beg to present the seventh report of the Committee on Estimates on Agriculture, Horticulture, Co-operation, Animal Husbandry and Fisheries Departments.

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## SPECIAL MOTION

### **re : CONDUCT OF SOME MEMBERS DURING THE GOVERNOR'S ADDRESS.**

MR. SPEAKER.—Before this motion is moved by Sri Ganji Veerappa, I should like to say a few words. The members will kindly remember that there is another motion, notice of which has been given by the Hon'ble Minister for Home. I had kept it in abeyance. I had explained the view point, the idea in my mind, what is appropriate and proper with regard to decorum and the rules to be observed at the time when the Head of the State is present in a Joint Session or any other Session. After that, I had occasion to discuss the matter with the Hon'ble Leader of the House and the Hon'ble Leader of the Opposition and a few other Hon'ble Members also. If we are to accept the resolution it is one way or the Motion made by the Hon'ble Minister for Home, will have to go to a Committee.